

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KOBEAY QURAN SWAFFORD,

Defendant-Appellee.

UNPUBLISHED

March 27, 2007

No. 268499

Wayne Circuit Court

LC No. 05-010897-01

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order of dismissal for failure to comply with the interstate agreement on detainers (IAD), MCL 780.601 *et seq.* We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with first-degree premeditated murder, MCL 750.316(1)(a), assault with intent to commit murder, MCL 750.83, and possession of a firearm during the commission of a felony, MCL 750.227, arising out of a shooting that occurred in April 2004. Defendant was arrested in Tennessee on federal charges in May 2004. The Wayne County prosecutor sent the United States Marshal Service a notice of detainer on June 1, 2004. Defendant pleaded guilty to the federal charges in September 2004, and was sentenced to prison in November 2004.

Following his imprisonment, defendant was notified of the detainer. He requested disposition of the outstanding charges and his request was received by the prosecutor's office and the court clerk's office on March 7, 2005. Defendant was not arraigned on the outstanding charges until November 3, 2005. He argued that because he was not tried within 180 days after the clerk's office and the prosecutor's office received his request for disposition, the court lost jurisdiction and the case must be dismissed. The trial court agreed and dismissed the case.

The trial court's ruling on a motion to dismiss is reviewed for an abuse of discretion. *People v Stone*, 269 Mich App 240, 242; 712 NW2d 165 (2005). The trial court's interpretation and application of a statute is reviewed de novo. *Id.*

"The IAD is a uniform law which prescribes procedures by which a prisoner may demand the prompt disposition of charges pending against him in a state other than the one in which he is

imprisoned and prescribes procedures by which a state may obtain, for trial, a prisoner who is incarcerated in another state.” *People v Malone*, 177 Mich App 393, 396; 442 NW2d 658 (1989). “The purpose of the IAD is to require states to dispose of detainees in an expeditious manner in order to prevent interference with a prisoner’s participation in programs of treatment and rehabilitation.” *People v Monasterski*, 105 Mich App 645, 652-653; 307 NW2d 394 (1981). Article III governs the prisoner’s right to demand disposition of charges. It provides in part:

Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officers’ jurisdiction written notice of the place of his imprisonment and his request for final disposition to be made of the indictment, information or complaint [MCL 780.601, art III(a).]

The IAD does not apply to a person who is incarcerated, but is not actually serving a term of imprisonment, e.g., a person in jail pending trial or a parolee awaiting revocation. *Monasterski, supra* at 653; *People v Wilden (On Rehearing)*, 197 Mich App 533, 539; 496 NW2d 801 (1992). Thus, a detainer filed against a jail inmate before he begins serving a prison sentence is insufficient to implicate the IAD. *Monasterski, supra*; *Wilden, supra*. Accord *Bruce v State*, 998 SW2d 91, 94 (Mo App, 1999). Because the IAD was not implicated when the detainer was filed, the trial court abused its discretion in dismissing the charges for a violation of the IAD.

Reversed and remanded. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens